IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 527 OF 2005

Zilla Parishad, Sangli. ... Appellant (Ori.Defendant)

V/s

Shri Sharnappa Daryappa Kumbhar ... Respondent

Mr. Amit Sale for the appellant.

Mr. P.M. Mengane for the respondent.

CORAM: P.V. KAKADE, J.

DATED: 18TH AUGUST, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Sangli, dated 29.6.2004 dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Jr.Divn., Sangli, dated 27.6.2002 decreeing the plaintiff's suit and declaring that the order issued by the defendant on 26.8.1996 discharging the plaintiff from service since 31.8.1993 was illegal and bad in law and, therefore, not binding on the plaintiff and consequent perpetual injunction came to be issued.

2. I have heard the learned counsel for both parties. Perused the record.

3. The plaintiff was working as Head Master in Kannad Primary School, Basargi, Tal. Jath of the defendant Zilla Parishad, Sangli. The plaintiff commenced with service as primary teacher in December, 1962. He was confirmed on 17.11.1970 w.e.f. 1.5.1969. He was promoted as Head Master on 20.11.1992. His job was transferable and he has served from place to place in that capacity. The defendant issued order dated 26.8.1996 stating that the plaintiff was relieved from service w.e.f. 31.8.1993. The plaintiff came with the case that his birth date is 1.6.1940 and not 12.8.1935 and on the date of the suit two more years were left for him to retire, but the defendant treated his birth date as 12.8.1935 and issued the impugned order and hence the suit was filed.

The defendant contested the suit on various grounds inter-alia submitting that the proper birth date of the plaintiff was 12.8.1935 as per the records and, therefore, he was bound to retire as per the notice and hence the notice was issued and, therefore, the suit was

sought to be dismissed.

4. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the proper and correct birth date of the plaintiff as reflected from the record was of the year 1940 and not of 1935 and, therefore, the impugned order was held to be illegal and, as such, the suit came to be decreed.

5. The appeal was carried to the District Court, Sangli. The learned Addl. District Judge, after hearing both parties, concurred with the findings recorded by the Trial Judge and dismissed the appeal. Hence the present appeal.

6. At the outset, it may be noted that there is absolutely no substantial question of law involved in this appeal and the dispute has rightly been resolved by both the Courts below by recording concurrent findings to the effect that the correct birth date of the plaintiff was 1.6.1940 and not 12.8.1935 and, as such, the notice/letter issued by the defendant was premature and illegal and suit came to be decreed. In this regard, it must be noted that the original service book is produced on record at Exh.82. The initial entry

about birth date of the plaintiff was shown as 12.8.1935. However, later on, it has been bracketed and the birth date was substituted as 1.6.1040 with remark that it was verified from the P.S.C. Certificate. Again on 23.12.1992, the Block Development Officer verified the birth date on the basis of plaintiff's certificate of 7th Standard. On the basis of this documentary evidence, both the Courts below have concurrently found that the correct birth date of the plaintiff is 1.6.1940 as per the original records kept and maintained by the defendant themselves which was in their own custody. The learned counsel for the appellant/defendant submitted that in all the possibility, the altercation was made by or at the behest of the plaintiff, however, there is absolutely no iota of evidence to suggest this aspect especially when the original document was admittedly in the custody of the defendant and, there is no evidence to suggest that the plaintiff had access to the same in order to play any possible mischief. In other words, once this position is clear, the appellant/defendant is not entitled to the benefit of Rule 38 of the Maharashtra State Civil Service Rules, 1981 as the entry is required to be signed by the competent authority, which is not so signed, which omission can be attributed to the

defendant and the plaintiff cannot be held responsible for the same.

Be that as it may, the fact remains that there is no substantial question of law involved in this appeal and also has no merits and, therefore, stands dismissed with no order as to costs. Consequently, the Civil Application No. 964 of 2005 also stands dismissed with no order as to costs.

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